

REMARKS

This amendment is in response to the Office Action of March 22, 2007 in which claims 1-21 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

The Examiner admits that the claims fall within enumerated statutory categories (see Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility dated 22 November 2005 at Section IV, Subsection B). However, the Examiner states further that the claimed invention falls within a judicial exception (laws of nature, natural phenomena and abstract ideas), specifically an abstract idea because they “are in reality seeking patent protection of the software program in the abstract as evidenced by claims 20 and 21.” The Examiner goes on to state that “since the claims are not directed to a practical application of such judicial exception (e.g., because the claim does not require any physical transformation and the invention as claimed does not produce a useful, concrete, and tangible result) the claims are nonstatutory.

The software program product claims 20 and 21 have been amended to include the limitation that they comprise a computer readable medium.

The guidelines in Section IV C (determine whether the claimed invention falls within Section 101 judicial exceptions-laws of nature, natural phenomena and abstract ideas) point out that the U.S. Supreme Court has held that “a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter” under §101, *Chakrabarty*, 447 U.S. at 309, 206 USPQ at 197. “Likewise, Einstein could not patent his celebrated law that $E = mc^2$; nor could Newton have patented the law of gravity.” Ibid. Nor can one patent “a novel and useful mathematical formula,” *Flook*, 437 U.S. at 585, 198 USPQ at 195; electromagnetism or steam power, *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113-114 (1853); or “[t]he qualities of *** bacteria, *** the heat of the sun, electricity, or the qualities of metals” *Funk*, 333 U.S. at 130 76 USPQ at 281; see *Le Roy* 55 U.S. (14 How.) at 175.

The guidelines further state that while abstract ideas, natural phenomena and laws of nature are not eligible for patenting, methods and products implying abstract ideas, natural phenomena, and laws of nature to perform a real-world function may

well be. In evaluating whether a claim meets the requirements of § 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomena, or law of nature, rather than for the abstract idea, natural phenomena, or law of nature itself.

In a first step, the Examiner is to determine whether the claimed invention covers either a §101 judicial exception or a practical application of a § 101 judicial exception.

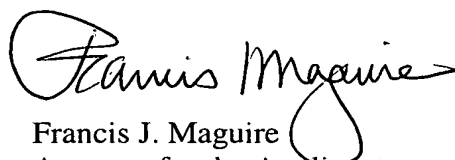
The applicant takes issue with the Examiner's conclusion that the claims are directed to a judicial exception in the same sense as a new mineral discovered in the earth or a new plant found in the wild, or Einstein's celebrated law, Newton's law of gravity or Samuel Morse's attempt to claim every conceivable application of the transmission of an electromagnetic signal over a distance. The claims involve wavetable based sound synthesis where a first processor stores wavetable data and a second processor generates at least an output audio signal frame-by-frame based on samples of the wavetable data. This cannot be viewed as an attempt to patent an abstract idea, natural phenomenon, or law of nature. Rather, it is for a practical application in the real world technology of wavetable based sound synthesis. When considering the claims as a whole, it therefore cannot be said that the claims are directed to an attempt to patent an abstract idea, natural phenomenon, or law of nature. It is deserving of patent protection as a practical method or means of producing a beneficial result or effect, i.e., the generation at least of an output audio signal frame-by-frame based on selected samples from stored wavetable data. As such, the claimed invention produces a useful, concrete and tangible result.

It is a useful result because the invention is specific, substantial and credible. A tangible result is produced because it is a practical application but produces a real-world result, i.e., an audio signal. It produces a concrete result in that an audio signal is reproducible and predictable. Finally, the claimed invention does not preempt any abstract idea, law of nature or natural phenomenon.

Therefore, it is requested that the 35 U.S.C. § 101 rejection of claims 1-21 be withdrawn.

The objections and rejections of the Office Action of March 22, 2007, having been obviated by amendment or shown to be inapplicable, withdrawal thereof is requested and passage of claims 1-21, as amended, to issue is earnestly solicited.

Respectfully submitted,



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